

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA**

**Application for Certification)
of the Pico Power Project)
by Silicon Valley Power)
)
_____)**

Docket: No. 02-AFC-3

PRE-HEARING CONFERENCE STATEMENT

The Staff is ready for the April 16 evidentiary hearings and responds to the requested responses in the hearing notice as follows:

1. Staff is prepared to proceed to hearing on all topic areas with the exception of air quality and alternatives.
2. Staff is not ready for hearings in air quality because the air district has not yet issued its Preliminary Determination of Compliance (PDOC), which is necessary for Staff to complete its testimony and provide essential proposed conditions for the project license.
3. No topic area ready for hearing is in dispute, with the possible exception of cultural resources concerning the topic of construction monitoring. Staff believes the Applicant will identify any discrete issues in that topic area in dispute.
4. The witnesses providing testimony are identified in the Staff Assessment. All testimony has been provided in full in that document. With the possible exception of cultural resources, no topic area is in dispute, Staff proposes that most topic areas be submitted by declaration without the requirement of live witness testimony. At the pre-hearing conference we request that the Committee inform Staff which witnesses it would wish to have available to summarize testimony at the hearing and be available for hearings.
5. Staff does not expect cross-examination in any areas. However, it preserves its right for a brief cross-examination of applicant witnesses regarding cultural resources, should this topic require adjudication.
6. Staff's exhibits will consist of the testimony in the Staff Assessment. This document has already been made available to the public and Committee. Prior

to hearing the Staff will also issue an Addendum to the Staff Assessment, which Staff will also offer as an exhibit.

7. Staff requests no additional hearing dates at this time.
8. The Bay Area Air Quality Management District has not yet issued its PDOC. It is currently in discussions with the applicant, U.S. EPA, and the Air Resources Board regarding the appropriate Best Available Control Technology levels. A meeting will occur next week on this issue, and the issue is expected to be resolved shortly. Resolution will allow the filing of the PDOC, and the resolution of the air quality issue.
9. Applicant and Staff are still discussing proposed modifications of Staff's proposed Conditions of Certification. The Applicant asked for changes to the following conditions:
 - a. **BIO-6, 8 and 9:** Applicant has asked for minor changes to these conditions. Staff is still reviewing the proposed changes and will be able to report its agreement or disagreement at the pre-hearing conference.
 - b. **CUL-6:** The Applicant asked that it not be required to retain a Native American monitor on-site during all excavation activities, but rather have the Native American monitor on-call, and only be on-site when called by the Cultural Resource Specialist (CRS). Staff responded that the Condition allows the CRS to reduce the level of monitoring when justified, and also specifies that a Native American monitor is needed only "where there is a potential to discover Native American artifacts." Staff felt no changes were necessary to provide the flexibility sought by the Applicant. Applicant responded that it may raise the subject at hearings, depending upon further internal discussions.
 - c. **HAZ-2, 4, 6 and 11:** The Applicant sought minor changes to these conditions that Staff tentatively agreed to make, pending review of the final language changes. Most significant of these is the removal of the reference to the need for a submitting a Risk Management Plan to USEPA in **HAZ-2**. Staff and the Applicant intend to provide the exact language changes, in redline/strikeout format, prior to the pre-hearing conference.
 - d. **LAND-8 and 9:** Applicant requested, and Staff tentatively agreed, to clarify **LAND-8** such that the project owner shall ensure that the pedestrian/bicycle path will be realigned by a 3rd party, rather than requiring the project owner to do the work itself; and Applicant and Staff agreed that **LAND-9** is no longer needed because the Applicant will not need to utilize an off-site route for relocating an existing PG&E 115 kV transmission line that currently crosses the project site.
 - e. **NOISE-4, 6 and 8:** Applicant sought clarification of these three conditions to further specify the exact requirements for noise levels at the required measuring points, related to whether the specified noise level was for

project operations alone, or in combination with existing ambient levels. Staff clarified that the limits specified were for the project alone, not in combination with existing ambient noise, and tentatively agreed to make minor changes to the conditions to make this distinction clear, pending review of the final language changes.

- f. **Soil & Water 1, 2, 3, 6 and 8:** Applicant sought clarification of how other agencies will be involved in the permitting and monitoring of the proposed on-site groundwater well used to supply backup cooling water in the event of an interruption of the primary source of cooling water: recycled water from the San Jose/Santa Clara Water Pollution Control Plant. Staff responded that the Energy Commission retains the ultimate permitting authority for the well, but will greatly stress cooperation and input from other agencies concerned with water quality and supply issues in the area, especially the Santa Clara Valley Water District. Applicant also sought, and Staff tentatively agreed, pending review of the final language change, to allow further groundwater pumping under **S&W-6** in the event of an extended interruption in recycled water supplies, such as after a natural disaster. Lastly, Staff agreed to the Applicant's request to supply impact criteria for the aquifer test specified in **S&W-8**, and to clarify that the test is meant to provide assurance about Staff's conclusion that project operation will not result in a significant impact to water resources.
- g. **VIS-1 through VIS-6:** Applicant sought and Staff tentatively agreed to make minor changes to these conditions, pending review of the final language changes. These include specifying "prior to commercial operations" rather than "prior to first turbine roll" as has been the standard in other cases. Staff also tentatively agreed, pending review of the final language changes, to provide clarification to **VIS-5** as to the nature of the City of Santa Clara's involvement in interpreting the City's design guidelines, and that the condition is being proposed for LORS compliance, rather than to mitigate a potentially significant environmental impact.

Date: April 11, 2003

Respectfully submitted,

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